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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,178	03/04/2002	Steven L. Rhea	10872.0158.NPUS00	9954
26720	7590	10/21/2003	EXAMINER	
HOWREY SIMON ARNOLD & WHITE LLP ATTEN. DOCKETING DEPT. (A) 750 BERING DRIVE HOUSTON, TX 77057				BUSHHEY, CHARLES S
ART UNIT		PAPER NUMBER		
		1724		

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/091,178	RHEA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Scott Bushey	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 15 August 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) 1-5 and 9-15 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 6-8 and 16-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     / Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 sh.                    6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species C, as depicted by Figure 5, as submitted August 15, 2003 is acknowledged.

Accordingly, claims 6-8, and 16-18 have been examined herein, while claims 1-5, and 9-15 are withdrawn from further consideration.

### ***Claim Rejections - 35 USC § 112***

2. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, last line, "the water" lacks antecedent basis. Applicant should be consistent within the claim, either utilizing the term "liquid" or "water" throughout, but not using the terms interchangeably.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 6, 7, and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brown (Figs. 1-14; col. 3, lines 41-48; col. 8, lines 50-60; col. 9, lines 36-49).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown taken together with Droege.

Brown (Figs. 1-14; col. 3, lines 41-48; col. 8, lines 50-60; col. 9, lines 36-49) as applied above substantially discloses applicant's invention as recited by instant claims 8 and 17, except for the slit in the valve cap being H-shaped.

Droege (Figs. 1-3) discloses a liquid container having a resiliently sealed opening therein similar in construction to that of Brown, but wherein the slotted opening is specifically disclosed as being in an H-shape. Wherein an H-shaped slit will more readily return to a reliably sealed condition than a simple straight slit or a more complicated slit system, it would have been obvious for an artisan at the time of the invention, to modify the slit shape of Brown to that of an

H-shape, in view of Droege, since such would insure against leakage of product from the container.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Stanek et al '190 or Stanek et al '359, taken together with Brown and Droege, as applied to claims 8 and 17 above.

Stanek et al '190 or Stanek et al '359 each alternatively disclose a humidifier assembly having a valved water bottle and a water tray with an upright protrusion thereon to interact with the valve to dispense water from the bottle to the humidifier. Neither of the alternative primary references teach the valve means being in the form of a slitted, flexible barrier.

Brown, as applied above teaches a liquid dispensing bottle having a valve in the form of a slitted, flexible barrier. Droege teaches utilizing an upright protrusion from an underlying liquid tray to open a bottle valve in the form of a slitted, flexible barrier. In view of the teachings by Brown and Droege, it would have been obvious for an artisan at the time of the invention, to substitute a valve in the form of a slitted, flexible barrier for the spring biased valve means of either of the alternative primary references, since the valve construction is simpler and less prone to mechanical failure.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (703) 308-3581. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

**Applicant should note that after approximately December 9, 2003, Scott Bushey can be reached at (571) 272-1153, and Blaine R. Copenheaver may be reached at (571) 272-1156.**

Scott Bushey  
Primary Examiner  
Art Unit 1724

csb  
10/15/03

  
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